

1 MORGAN, LEWIS & BOCKIUS LLP
Kathy H. Gao, SBN 259019
2 kathy.gao@morganlewis.com
Joseph V. Marra III, SBN 238181
3 joseph.marra@morganlewis.com
300 South Grand Avenue
4 Twenty-Second Floor
Los Angeles, CA 90071-3132
5 Tel: +1.213.612.2500
Fax: +1.213.612.2501
6

7 Attorneys for Defendants
ONTARIO AIRPORT HOTEL CORPORATION and
8 FIRST AND MISSION PROPERTIES LLC

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 CRAIG CRANDALL,

13 Plaintiff,

14 vs.

15 ONTARIO AIRPORT HOTEL
CORPORATION dba HILTON SANTA
16 CLARA; FIRST AND MISSION
PROPERTIES LLC,
17

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. 3:23-cv-02006-JD

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

*[Filed Concurrently Herewith Defendants'
Memorandum of Points and Authorities, and
[Proposed] Order]*

Date: November 2, 2023
Time: 10:00 a.m.
Courtroom: 11 (19th Floor)
Judge: Hon. James Donato

**TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA, AND TO PLAINTIFF CRAIG CRANDALL AND HIS
ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE that on November 2, 2023 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 11 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, before the Honorable James Donato, Defendants Ontario Airport Hotel Corporation and First and Mission Properties LLC (“Defendants”) will and hereby do move the Court for an order dismissing Plaintiff Craig Crandall’s (“Plaintiff”) Complaint in its entirety under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, or under Federal Rule of Civil Procedure 12(b)(1) for lack of standing.

Plaintiff alleges that he encountered three barriers at Defendants’ hotel (“the Facility”): an armchair blocking the route to the thermostat; towels that were placed out of his reach; and a broken diverter valve in the shower. He asserts causes of action under Title III of the Americans with Disabilities Act (“ADA”), California’s Unruh Civil Rights Act (“UCRA”), and the California Health and Safety Code (“CHSC”). As explained in detail in Defendants’ supporting Memorandum of Points and Authorities: (1) Plaintiff’s ADA claim with respect to the armchair and towels should be dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted because Plaintiff fails to allege facts showing how the armchair and towels violated specific ADA standards; (2) Plaintiff’s ADA claim should be dismissed in its entirety for failure to state a claim upon which relief can be granted because temporary obstructions or isolated instances of mechanical failure do not violate Title III, and Plaintiff inadequately alleges that the three barriers were not isolated or temporary; (3) Plaintiff’s ADA claim should be dismissed in its entirety under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction because, to have standing to bring an ADA Title III claim, a plaintiff must face a real or immediate threat of future injury, but Plaintiff fails to allege that the purported barriers were more than isolated or temporary interruptions in access; (4) Plaintiff fails to state a UCRA claim to the extent it is based on the purported ADA violations because he fails

1 to plead the existence of ADA violations; (5) Plaintiff fails to state an independent UCRA claim
 2 based on alleged intentional discrimination because he does not allege affirmative, willful
 3 misconduct with the specific intent to discriminate; and (6) Plaintiff fails to state a CHSC claim
 4 because, as with his Title III claim, he does not identify any California Building Code provisions
 5 that the armchair and towels allegedly violated, and he inadequately alleges that the three barriers
 6 were not isolated or temporary.

7 This Motion is supported by this Notice of Motion and Motion, the accompanying
 8 Memorandum of Points and Authorities, the pleadings and papers on file herein, and such other
 9 oral and documentary evidence and/or argument as may be presented to the Court at or before the
 10 hearing.

11 Dated: September 13, 2023

MORGAN, LEWIS & BOCKIUS LLP

12 By /s/ Kathy H. Gao

13 Kathy H. Gao
 14 Joseph V. Marra III
 15 Attorneys for Defendants
 16 ONTARIO AIRPORT HOTEL
 17 CORPORATION and FIRST AND MISSION
 18 PROPERTIES LLC
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28